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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/584,259	05/31/2000	Marcos N. Novaes	POU9-2000-0003-US1	5275
46369	7590	02/14/2006	EXAMINER	
HESLIN ROTHENBERG FARLEY & MESITI P.C. 5 COLUMBIA CIRCLE ALBANY, NY 12203			WON, MICHAEL YOUNG	
		ART UNIT	PAPER NUMBER	
			2155	

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<p style="text-align: center;"><b>Advisory Action Before the Filing of an Appeal Brief</b></p>	<b>Application No.</b> 09/584,259	<b>Applicant(s)</b> NOVAES ET AL.
	<b>Examiner</b> Michael Y. Won	<b>Art Unit</b> 2155

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 26 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a)  The period for reply expires 3 months from the mailing date of the final rejection.

b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a)  They raise new issues that would require further consideration and/or search (see NOTE below);

(b)  They raise the issue of new matter (see NOTE below);

(c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 50-62 and 66-89.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

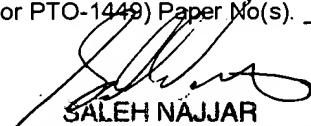
10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
SEE Attached Document.

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.

13.  Other: \_\_\_\_\_.

  
**SALEH NAJJAR**  
**SUPERVISORY PATENT EXAMINER**

***Response to Arguments***

1. The applicant(s) argue that the Restriction Requirement made in the Final Office Action filed October 19, 2005 is improper. The applicant(s) asserts that no burden exists because although they are classified in different classes/subclasses, claims are closes related because they are directed to managing processing group.

Although the preamble of the claims states "A method of managing processing groups..." the functionality of the body is completely different. As such, claims 50-62 and 66-89 are drawn to Distributed Data Processing and claims 63-65 and 90-92 are drawn to Error Detection/Correction of Networks. Clearly because they are classified in different classes/subclasses, the examiner is burdened with having to perform twice the searching than required. Therefore, the restriction is proper.

2. The applicant(s) also argues that because in the past three actions Office Actions, the substance of these claims have been searched together, that a restriction at this point is untimely.

The applicant(s) are reminded that this restriction is based upon a completely new set of claims. The applicant(s) cancelled all previous pending claims 1-49 and presented new claims 50-92 in the Amendment After Non-final filed July 28, 2005. Although a restriction at this point would have been untimely based on the old claims, however based on the new claims, the restriction is proper.

3. The applicant(s) argue that "The sequence number of Moiin is used to determine which messages are to be processed, and is not used to determine whether a node is to join a processing group".

Column 6, lines 27-38 of the Moiin patent discusses of a sequence number pertaining to a message, but this message is a join message, "These are the nodes that are trying to join the cluster and we must accept their initial messages". Column 9, line 20 to column 10, line 1 explicitly teach that the sequence number must be the same for all nodes prior to entering the membership algorithm. The membership algorithm is a process of joining (see col.7, lines 64-67). Clearly, the cited references teach the broad limitation of "determining whether the prospective member can join the processing group, said determining employing the sequence number".

4. The applicant(s) argue that Gamache does not overcome the deficiencies of Moiin with respect to claim 59. The applicant(s) argue that Gamache does not teach the limitation "setting the sequence number of the processing group, in response to the determining indication a quorum" because in Gamache, the quorum represents whether enough replicated storage devices are available to a cluster, rather than whether there are a certain number of members of a cluster being formed.

The examiner disagrees with this assertion. Gamache clearly teaches that a quorum represents majority (certain number of members) and the replicated storage devices are the devices forming a cluster (see col.2, lines 11-17).

The applicant(s) also argue that since Gamache teaches that a sequence number merely indicates which is the most up-to-date replica in the quorum of replicas, that the sequence number is different than that of the claimed invention.

Whether this assertion of the sequence number pertaining to Gamache is true or not, there is no established definition in the claim language in terms of functionality to teach away from the prior art.

In response to the applicant(s) also argue that there is no teaching or suggestion to combine Moiin and Gamache, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the sequence number of Moiin and Gamache pertains to the nodes of the current cluster. Therefore, since Moiin teaches of changing memberships and changing majority quorum (see col.5, lines 38-39 & 46-48), such changes would obviously result in the sequence number being set to a different sequence number (as taught by Gamache) since Moiin teaches that the sequence number "is the same for all nodes in the current cluster".

***Conclusion***

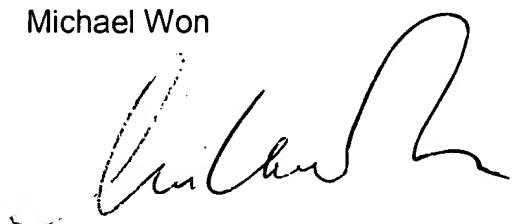
5. For the reasons above claims 50-62 and 66-89 remain rejected and pending.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Y. Won whose telephone number is 571-272-3993. The examiner can normally be reached on M-Th: 7AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Won



February 7, 2006